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ABSTRACT

This paper discusses the issues involved and presents an overall picture of attempts to censor the April 11, 1938 issue of "Life" magazine featuring a four-page spread of 35 pictures from the film "The Birth of a Baby." It examines contemporary news accounts from newspapers published in New York, Boston, Chicago, St. Louis, New Orleans, and Memphis, where this magazine issue came under fire by local authorities. In addition, the paper discusses the court opinion written when the publisher of "Life" was charged with issuing an "obscene" publication. (HOD)

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# THE BIRTH OF A BABY:

# OBSCENITY OR CENSORSHIP

by

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

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TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

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In photographing what many would say is one of the most beautiful moments anyone can experience, Brian Lanker earned the Pulitzer Prize for feature photography in 1973. His subject was the birth of a baby.[1] This wasn't the first time a baby's birth had been photographed for publication. Life magazine did this thirty-five years prior to Lanker's efforts. But rather than meeting with widespread praise and receiving a prestigious prize for photojournalism, Life magazine was condemned and confiscated by local police in several cities across the country. The total number of communities taking action against what was then thought to be an "obscene" publication ranges from thirty-three[2] to sixty.[3] Whatever the exact number, one fact remains clear, the publication of this photo essay in the April 11, 1938 issue of Life, led to a widespread attempt at censorship by many local authorities that was at times successful, and at times doomed to failure.

This study is an attempt to piece together the issues involved and to present an overall picture of the assault against this one issue of Life. Contemporary news accounts from several cities where this issue came under fire by local authorities will be examined. This examination includes news accounts from newspapers published in New York, Boston, Chicago, St. Louis, New Orleans, and Memphis. In addition to these news accounts, this study will also examine the court opinion written when the publisher of Life was charged with publishing an "obscene" publication.

## The 1930's

To better understand the attitudes on this issue and the actions taken against Life, it might be helpful to recall that life in the 1930's was unique in several ways. It was a period marked by a communications boom. Such things as the first technicolor motion picture was produced at this time. Major photography magazines such as Life and Look were founded in the late 1930's, and major advances were made in the transmission of news photography by radio and wire. In short, the 1930's was a period when the nation had become image conscious.[4]

The 1930's was also a time when movie attendance was at a high level, with as many as eighty-five million people going to the cinema each week. What the audience saw at the movies was often a sanitized version of life. For example, in 1934 the Catholic League of Decency started to see that films avoided long kisses, adultery, nude babies, or married couples sleeping in anything but twin beds. And "when Dennis King sang 'to Hell with Burgundy,' a thrill ran through the audiences, as though a naked woman had run among them."[5]

One film that led to the eventual clash between Life and local authorities also had its beginning in the mid-1930's. Produced by the American Committee on Maternal Welfare and sponsored by sixteen medical and social service societies, The Birth of a Baby was favorably previewed by a majority of 12,000 doctors and clubwomen. The climax of this seventy-two minute film, which followed a woman's life during pregnancy, was the actual birth of a baby.[6]

> For one breathless minute the camera, with its matchless eye for detail, watches the child's head emerge as the physician moves swiftly to support it, notes an infant arm fling heavenward as it comes into view, shows the physician delivering the child at last from its laboring mother.[7]

A main reason for the film being produced was to help reduce death and sickness among mothers and children through education. The death rate of mothers and babies in birth was high, estimated at a yearly toll of 150,000 lives.[8]

Several stills from this motion picture eventually found their way into Life as a part of a special photo essay on the subject of birth. This particular essay was only one of a long series of medically related photo features that Life had run early in its career. From 1936 to 1938, several photo features on such topics as epilepsy, syphilis, nursing, socialized medicine, X-rays, tuberculosis, and pneumonia had appeared in Life. In the issue dated April 11, 1938, Life continued its medical series with a four page spread of thirty-five pictures from the film The Birth of a Baby, plus two anatomical diagrams. There was no nudity or unnecessary disclosure in the entire feature.[9]

The publishers of Life knew that this particular photo essay could be a cause of concern for some people, so they took the precaution of notifying their 650,000 subscribers in advance of publication by sending them a letter detailing both the content and purpose of the upcoming essay. It was also pointed out in this notice that the photo feature would be printed on the middle pages of the magazine, so that it could be easily removed by family censors. In addition, the magazine's print order for

this particular issue was held at the previous week's level of 2,040,000.[10] These actions by Life indicated that the magazine knew the potential of the photo essay.[11] By the time the entire episode was over, it was estimated that 17,000,000 people had seen the issue, with sixty-one percent of the public surveyed saying that they approved of this method of teaching the public about childbirth and the care of mothers.[12]

## Banned in Boston

Although a majority of Americans may have favored this photo essay, a small but effective minority in many partsof the country was successful in limiting the distribution of this issue, despite the fact that the magazine was cleared for mailing by the U.S. Post Office.[13] The first move against Life came in Boston and the surrounding area. Boston Police Commissioner Joseph F. Timilty was concerned about the distribution of obscene literature in his territory. In Boston during February and March of 1938, Timilty received agreement among magazine distributors to ban obscene literature. The result was that thirty-five detective, picture, and other magazines with a combined circulation of 1,000,000 copies had been banned from news stands and cigar stores. Although Timilty had no legal power to set himself up as the censor in Boston, or any other area, he could get warrants for the arrest of people distributing obscene literature. Because of this threat, news distributors generally cooperated with Timilty by submitting questionable publications to Timilty's Board of Censors. This board consisted of Edward W. Fallon, superintendent of police; Capt. Charles F. Eldridge; and Augustine J. Gill, police secretary.[14]

In an effort to extend his censorship powers to other areas outside of Boston, Timilty arranged for a meeting of 107 magazine distributors from six New England states to discuss the issue of obscene literature. After addressing the meeting, which was held in Boston police headquarters, Timilty left the gathering so that the distributors could decide what, if anything, they could do about this issue. When the meeting adjourned, the distributors had agreed to a plan whereby a censorship committee of three distributors would be empowered to ban any magazine or periodical from New England on the grounds that it was salacious, obscene or immoral. The distributors agreed to suppress any publication that this board felt was unfit. And in the case of a dispute, the board would submit the issue to Timilty, whose decision would be final.[15]

The first test of this new method of voluntary censorship came when the distributors' censorship committee ruled that a four-page spread in a weekly news picture magazine should be torn out before it was sold on the newstands. This issue was shown to Timilty who said that the photographs under question were unsuitable for general distribution.[16] If the ruling of the censorship committee was followed, then all newsdealers in New England would not sell this issue of Life with the "Birth of a Baby" photo feature still intact. At first, it appeared that this plan was working. Boston newsdealers withheld the magazine from the newstands for a day, while some newsdealers agreed to tear the four page photo feature from the magazine before it was offered for sale. Meanwhile, reports from New Hampshire indicated that all copies of the magazine were taken off the newstands by order of the manager of the affected news agency.[17]

In Pittsfield, Mass., the first city to ban Life, Police Chief John L. Sullivan ordered the magazine to be kept from the newsstands Sullivan called the photographs "muffled propaganda on birth control." He added that "publication of such material hurts what the churches are trying to build up--modesty and virtue."[18] In Boston, an employee of a Back Bay newsstand Morris Baratz, received a summons for selling a copy of Life to a police detective.[19] One distributor in Boston was convicted and fined $500 for selling a copy of the magazine.[20] Meanwhile, Timilty moved on to other publications, announcing on April 10, 1938, that he would ban a magazine that contained "photographs of unclad women." This action raised the number of magazines banned in Boston to forty-two in two months. Timilty also used this announcement to restate his determination to "protect the children and decent minded people of Boston from the filth that has been filling some magazines."[21]

In response to the proposed ban of Life in Boston and nine other New England cities, Life publisher Roy E. Larsen said that the purpose of the photo feature was to educate people in an attempt to help reduce the mortality rate among women and their children during childbirth. In response to Larsen's statement, Joseph F. Lamb, State Department of Knights of Columbus, demanded the recall of the issue on "every ground of decency and morality."[22]

One day later, Larsen issued another statement on the banning of Life in Boston and other areas. Part of the statement said,

> Local police chiefs and in some instances desk sargeants in several New England cities, with doubtful authority, have set their own opinions of the value of Life's "Birth of a Baby" article against the endorsement of national authorities in the fields of education, health, and child welfare.... We have no intention whatever of removing the four pages from Life containing the "Birth of a Baby" story and are planning to initiate court action in cities when local censorship has banned distribution of the complete issue of Life.[23]

Other voices heard in opposition to the ban on Life included that of Rev. William G. Stidger, pastor of the Copely Episcopal Church. He said that he was shocked by the ban on the photographs in Boston. Copely added,

> It's a matter of bunk on the part of a group of stupid, narrow minded police commissioners and censors. Birth is the greatest experience in life, and I see nothing indecent in pictures of that experience. Life's effort is admirable and the magazine is living up to its name.[24]

Despite the actions taken by New England authorities, Life was still available to many readers. Even in Boston, the issue was being sold intact by several newsstands. John Tracy of the New England News Company has been told by his New York office to offer the magazine to the general public as usual because it was felt that the pictures were educational and could not be considered immoral.[25] And in New Haven, Conn., City Court Judge Thomas C. Sullivan lifted a police ban on the issue saying, "there is nothing contained in this magazine which could be construed as obscene."[26]

## St. Louis Police Seize Life

Censorship of Life's photo essay was not confined to the New England area. Another major effort against the magazine occurred in St. Louis. Following a declaration by St. Louis Prosecuting Attorney James P. Finnegan

that the photographs were obscene, police were ordered to seize any issue appearing on newsstands in the city. John E. Rogan, manager of the St. Louis News Co., local distributor of Life, said that 12,000 copies of the magazine were distributed to 500 local dealers early on April 8. But by the time the police started their confiscation of the issue at 3:30 p.m., only 2,857 copies were left. Rogan was arrested on April 8 at Finnegan's direction and then released on $500 bond. Rogan was charged selling and offering for sale indecent and immoral matter, a crime that had a maximum penalty of one year in the workhouse and a $1,000 fine. Finnegan said that he took this action after receiving complaints from three church groups and several women who refused to give their names.[27]

Protest about the police action was lodged in an editorial by the St. Louis Post-Dispatch. The editorial said in part,

> The protests [against the photo feature] were to have been expected. But if the picture series brings enlightenment that saves the life of only one mother, the controversy will have been paid for.
>
> The action in St. Louis is particularly regrettable. It goes against the city's long-standing tradition of tolerance, and freedom of expression. The authorities are placed in a dubious light by the fact that this honest constructive effort has been suppressed, while dozens of magazines that specialize in suggestiveness or downright filth continue to be sold freely by the newsstands.[28]

In another complaint against the seizure of Life, the St. Louis Civil Liberties Committee sent a letter of protest to Finnegan. The committee said, "In our opinion, these pictures do not constitute an offense against public decency or morals. Censorship of any kind is contrary to the tradition of St. Louis. Your action smacks of a self-appointed censorship in

defiance of this spirit and tradition."[29] Added to this list of criticism of Finnegan's actions was the comment from a St. Louis minister, Truman B. Douglass, pastor of the Pilgrim Congregational Church. He said that the seizure of the magazine showed that "puritan purience now reaches the ultimate by asserting it indecent to be born."[30]

Finnegan responded to this criticism by pointing out that while he had received only three protests of his actions, more than 100 other letters and calls of support for his efforts were sent to him. Finnegan added that he doubted the educational or intellectual value of the photographs. He also said that he would not want his children to see them. Pictures like these, Finnegan said, belong in medical publications.[31] In addition to issuing a defense of his actions, Finnegan ordered that all but fifty copies of Life be returned to Rogan. Rogan had agreed that he would not sell the issue in Missouri and that he would seek to withdraw any other issue of Life that might still be on an area newsstands.[32]

## Memphis Moves Against Birth Photos

Another ruling that the Life photographs were obscene led to the magazine's confiscation in Memphis, Tenn. Using an advisory opinion from the Memphis City Attorney Will Gerber that the pictures violated city and state obscenity laws, Memphis Commissioner of Public Safety Clifford Davis ordered the police to seize all issues of Life that were to be offered for sale. But Davis didn't stop there. He also contacted the local distributor of Life, S.M. Haney of the Memphis News Co., and told Haney of the order before the magazine was even distributed to area news dealers. Davis said that, "Mr.

Haney was co-operative, and saved the police a great deal of work." Haney told Davis that no copy of Life would be distributed. Haney later said that he had no idea if the photographs would be torn out of the magazine and the remainder of the issue sold at area newsstands. "I have received no instructions from the company," Haney said.[33]

In his opinion on the birth photographs, Memphis City Attorney Gerber said that the photographs were offensive, and "something that delicacy, purity, and decency forbid to be exposed." He added that Webster's Dictionary defined obscenity as something "offensive to chastity or modesty, expressing or presenting to the mind something that delicacy, purity, and decency forbid to be exposed." Punishment for a violation of the city's obscenity code carried a maximum of a $50 fine for each offense. Violation of the state code on obscenity carried a maximum punishment of one year in a county jail or workhouse and/or a $1,000 fine. In responding to Gerber's opinion, Commissioner Davis said, "I am glad to see him take this legal position. The relationship of parenthood with respect to childbirth is a most sacred institution and even nature itself has always protected conception and delivery."[34]

Haney said that he accepted the city's ban as a matter of necessity. Haney added that he received many calls on the subject. "A Number [of calls] were from people who wanted me to sell them copies secretly," Haney said, "offering as high as $1 a copy and assuring me they wouldn't 'snitch' to the police."[35]

Support for the city's ban came from some members of the Memphis and Shelby County Medical Society. The group issued a statement which said in part,

> Whereas the material presented is scientific, and from our viewpoint not obscene, it is doubtful whether the object that the publishers state they wish to obtain can best be accomplished by this particular kind of publicity. If the publication could be sent through the mail, so that it might be censored by those who take exception to it, and not be open to sale without restriction, it might well accomplish some good.[36]

The April 11 issue of Life finally made its way onto newsstands in Memphis, but only in censored form. The four page photo feature on the birth of a baby was torn from the magazines sold on the streets.[37]

## Other Areas Ban Life

Just as Memphis moved against Life, so too did many other cities. In Chicago Lt. Harry M. Costello of the Chicago Police Crime Prevention Bureau ordered the issue to be taken off the newsstands. Costello said the magazine could only be sold if the four page photo feature was removed. He added that newsstands violating his rule would lose their licenses. News store proprietors who refused to comply with Costello's order were told that they would be arrested.[38] The ban was lifted on the following day by Police Commissioner Allman. He said that the restriction was only temporary, and that the ban was lifted after police officials determined that the magazine did not violate any city ordinances.[39]

Mayor Maestri of New Orleans also ordered that all copies of Life offered for sale at local newsstands and news stores be seized. An 1884 statute was used as justification for this action. It is interesting that although a ban was undertaken against Life in New Orleans, the New Orleans Times-Picayune carried no mention at all of the ban. One reason for this omission can perhaps be seen in a small editorial appearing in the April 9,

1938, issue of the Times-Picayune. The newspaper, while not mentioning Life by name, said that a national magazine had set out to get the widest possible publicity what the magazine considered to be a daring article. The Times-Picayune said that a publicity buildup was needed because the material itself was actually overplayed in its representation as a daring item. The paper said that other material that is far bolder lies on the shelves collecting dust. For the buildup to be really effective, the editorial continued, "the bait has to be disguised, the rubber frog painted as a leaping devil that will hurdle the morals of the community and corrupt the commoners." This publicity then leads police and other authorities to "impose a censorship, and the financial returns are immense." Few people, the editorial said, think that this material helps anyone while it disgusts many.[40]

Other reports of cities and even a state banning Life include rather divergent areas of the country. For example, the magazine was banned in Newport, Virginia, by Police Chief W.E. Mahone, Governor George F. Earle banned the magazine in the entire state of Pennsylvania because of the birth photographs. And the issue was banned in Atlantic City, New Jersey. In Tucson, Arizona, the only far western city to ban the issue, the publisher of the Arizona Star sold twenty-five copies of the magazine openly over his own counter in defiance of the police ban.[42] In Miami, Florida, a ban on the sale of the magazine was lifted after the Dade County Medical Association endorsed the photo feature. In contrast to that, police in Baton Rouge, Louisiana seized all available copies of the magazine, saying that

it was objectionable because of the birth photographs. An effort by the police chief in Little Rock, Arkansas, to obtain an issue of Life after banning its sale at noon on April 8, 1938 proved futile. By the time he got to the newsstands to buy a copy of Life to decide for himself on the status of the pictures, the police chief found that the magazine was sold out. And a ban that was imposed in Syracuse, New York, was lifted on April 8. Other cities banning the magazine included Birmingham, Alabama, and Gulfport, Mississippi.[43]

## Banned in the Bronx

Although the list of cities banning Life is long, perhaps the most interesting story in Life's battle with the censors can be found in the conflict between Bronx City Attorney Samuel J. Foley and Roy E. Larsen, the publisher of Life. The confrontation began when Foley declared that the birth photographs were "an outrageous affront to decency." The police, operating with Foley, confiscated 1,000 copies of the magazine in the Bronx in one afternoon. Four newsdealers were also arrested for selling licentious literature. Later in the day, Foley said that he wished to avoid as many arrests as possible, and urged local news dealers to voluntarily surrender copies of the magazine. In a public statement, Foley said,

> I think it [the publication of the birth photographs] is an outrageous affront to decency and an unmistakable violation of the law. It is not in any sense a borderline case. If they like to fight it out in this county as they are reported ready to do, I will be delighted to have the editor, the publisher, and owner come up here and sell me a copy of it, so that I might try it out on them instead of on some newsdealer.[44]

At about this same time, Life was also banned in other areas of New York and New Jersey, Essex, Bergen, Hudson, Union, and Mercer counties in New York moved to suppress the issue. Nassau District Attorney Edward J. Neary ordered the county and village police to seize all copies of the magazine that were placed on sale pending a presentation of the issue before a grand jury.[45] The Nassau County grand jury handed down an opinion one week later, saying that "as a matter of public policy, education on the subject presented is highly desirable, but that the printing of such matter should not be permitted in a magazine of general and unrestricted distribution." The grand jury said that the publication of the birth photographs, while not in good taste, was not a violation of the law. Meanwhile, in Mount Holly, New Jersey, Howard Eastwood, Burlington County Prosecutor, ordered police to seize copies of the magazine. Eastwood said that from a verbal description of the photographs, he felt that they were illegal. At about the same time, the State Department of the Catholic War Veterans adopted a resolution asking all district attorneys to suppress the magazine, calling it "an insult to decency, morality, and motherhood."[46]

Underlying this movement against Life in the New York area was the strong role played by Foley. In sharing his views on the conflict after its conclusion, Foley defended his actions. In a speech before the Holy Name Society of the New York Fire Department in Manhattan, the Bronx, and Richmond, Foley said:

> I try to live as a Catholic and administer my job as a Catholic.
>
> In these changing times, people are impatient with adhearance to standards of decency decreed by Catholic traditions.

> The people who are impatient with us today are the people who have lost their sense of perspective. Those are the people who swing the pendulum all the way across and bow to the ideology of the day--of sneering at God.[47]

## Life Goes To Trial

Given the fact that Roy Larsen had seen his magazine being banned in cities across the country, and having been challenged openly by Foley to carry the issue into court, it comes as little surprise that the publisher picked up the gauntlet and agreed to submit himself to arrest for selling an obscene publication.

Prior to announcing his decision to submit himself to arrest, Larsen said that his magazine would defend any news dealer arrested in the Bronx for selling the publication. Harold Medina, an attorney for Life, conferred with Foley and said that he [Medina] would press for an early hearing for anyone arrested for selling the magazine. Meanwhile, Life officials reported that the sale of the magazine in areas not covered by Foley's ban were moving at a brisk pace.[48] The ban on the magazine in parts of New York reportedly led to a rash of sales in other parts of the city, with supplies of the magazine exhausted, and available copies selling at premium rates. Even the main office of Life found itself deficient, and had to retrieve several issues set out to its attorney. No additional copies were published to meet this shortage.[49]

Although Larsen had originally planned to submit himself for arrest on April 9, this move was delayed for two days until April 11 by mutual consent between the attorneys for Larsen and Foley. Larsen's attorney, Morris L. Ernst, expressed confidence before going to trial. He said, "We haven't

any doubt we'll win the case. The arrests were silly and stupid. Why if those pictures were obscene, some 800 books in general circulation, many of which can be secured by anyone at any public library, are obscene.[50]

Flanked by three attorneys, Larsen was finally arrested after he had made arrangements with Foley to sell a copy of Life to Detective Frank McCarthy. Larsen's reason for submitting himself for arrest was, according to Foley, to test the ban rather than continue to have newsdealers arrested for selling the magazine. Larsen said that the magazine had been sold out, and that not more than 10,000 of the 2,000,000 copies printed were confiscated.[51] Following his arrest on April 12, Larsen pleased not guilty and was released in his lawyer's custody. His case was adjourned until April 19.[52]

Larsen's defense team won an important point early in the trial. The prosecution was overruled on a move to prevent Larsen's attorneys from calling expert witnesses to testify about the photographs. Using twenty-one experts in medicine, education, religion, and social welfare, Larsen's attorney, Morris Ernst, was able to demonstrate that the photographs were valuable, decent, constructive, and dignified. These experts said that the photographs would help allay fears of expectant mothers and help eliminate ignorance on the subject.[53]

On April 26, the three judge court handed down a unanimous decision clearing Larsen of all charges of selling an obscene publication. In the decision of People v. Larsen, written by Justice Pearlman, the court said,

> . . . the picture story, because of the manner in which it was presented, does not fall within the forbidden class. The picture story was directly based on a film produced under the auspices of a responsible medical group. There is no nudity or unnecessary disclosure. The subject has been treated with delicacy.[54]

When learning of the decision, Ernst said, "This means that there will be no more of this nonsense in the country where petty police chiefs set themselves up as censors of the nation's reading."[55]

## The Impact of People v. Larsen

Although Ernst felt that the results of Larsen would eventually limit the action of other police officials trying to censor publications, the actual legal impact of the case was somewhat limited. Even though the case was never appealed, which would have a tendency to increase the chances of it serving as a guide for future litigation, Larsen was cited on six different occasions by courts ruling on a question of obscenity. Five of the six cases citing Larsen came from the New England area, while the sixth case was a court decision in the midwest.

The most common use of Larsen was to draw upon the definition for obscenity used by Justice Perlman. In Larsen, obscene material was defined as that which tended "to corrupt morals or to lower the standards of right or wrong concerning sexual behavior."[56] This definition was later used by the City Magistrate's Court in New York in two obscenity cases involving the same defendant.[57] Larsen's definition of obscenity was also used in another case decided in a Court of Special Sessions in New York City.[58] The fourth court to rely on the definition of obscenity provided by Larsen was also in the same general part of the country. Fifteen years after Larsen, the Superior Court of New Jersey called upon the definition of obscenity used in Larsen.[59]

The legal impact of Larsen was not limited to just a definition of obscenity. Two other concepts concerning ways an item could be judged as being obscene, which were put forth in Larsen, later found their way into

two other court decisions. In one instance, the Superior Court of Delaware cited Larsen's use of expert testimony to help determine if an item would have a harmful effect on an individual as justification for allowing the use of expert testimony in the case at hand.[60] And in a United States Court of Appeals, Seventh Circuit, decision, Larsen was cited as support for the concept that the only way to really determine if the material under question was obscene would be to thoroughly examine the facts of the case.[61]

Even though Larsen's judicial impact was not overwhelming in its jurisdictions dealing with obscenity cases, it is interesting to note that this trial court decision did manage to find its way into six later obscenity cases. A similar comment can be made about this entire episode's impact on editorial commentary that focused on the question of censorship. For example, Editor and Publisher carried an editorial on Life's battle with the censors shortly after the event began. The commentary said, in part:

> Its [Life's] publication does illustrate, however, how far the frontiers of taboo have been moved since Anthony Comstock successfully prosecuted art and literary productions that might offend today's readers only by the intangibility of their allusions to the forbidden.
>
> Genuine censorship, not by publicity-hungry cops, clergymen or prosecutors, awaits the picture publishers if the dirty-minded segment attempts to exploit Life's enterprise by invading fields which the great middle class, buyers or magazines, will not tolerate in the printed page on the library tables.[62]

Other writers have seen Life's battle with the censors as a fight for liberty,[63] or a victory "won by the forces of cultural freedom."[64] And one man who played a key role in this episode, Morris Ernst, wrote several years

later that the lack of a defense offered by many publishers of books and magazines accused of being obscene can and has led to censorship. Ernst wrote:

> Such timidity naturally encourages the censorious. More important, it helps produce unconsidered law on censorship. A street-corner newsstand owner does not make enough profit on the sale of any magazine to warrant the expense of a court defense. It is cheaper to plead guilty . . . .
>
> No wonder vice hunters and police usually level their guns, not at the wealthier publisher who selects the manuscript (and who is really responsible for its publication) but at relatively impecunious retailers who order a few copies, often as samples, and usually on consignment.[65]

## In Conclusion

Just as Ernst is able to draw upon his experience in the "Birth of a Baby" episode to conclude that timid defense leads to more censorhip, so too can others draw upon this same event to find other thoughts for the future.

The first observation is that when a small, yet highly motivated and vocal minority takes to its cause the suppression of something that violates their standards of morality and decency, they sometimes can have swift and successful results. This is especially true when members of this minority hold positions of local power. Obviously the actions of this moral minority in the 1930's bears some rather striking similarities to a so-called "moral majority" operating in today's society. We are often faced with the same tactics of a small, highly organized and vocal minority who, through the assumption that the general public holds the same standards of morality as they, move against literature that has been considered informative and

educational, not obscene. The issues facing us today on the banning of books and magazines from public and school libraries are fundamentally the same as those issues surrounding the attempt to censor Life in 1938.

The second general observation for future consideration that can be drawn from this move against Life in the 1930's is that censorship does not work. In the case of Life's birth photographs, only a small number of copies of the magazine were actually kept from the general public. If anything, the publicity generated by the attempt to keep the magazine off the newsstands led to an even wider circulation of the magazine. The same is true today. Try and ban a publication, or limit its circulation, and you almost certainly make it a best seller.

If only one comment could put into proper perspective the attempt to censor Life in 1938, that comment was made by then First Lady Eleanor Roosevelt in her weekly news conference. The First Lady spoke of her friend's five year old son who was shown the four page photo feature depicting the birth of a baby. With a look of complete boredom, he said, "The ostrich in school had a much harder time laying an egg."[66]

NOTES

[1]Sheryle Leekley and John Leekley, Moments The Putlizer Prize Photographs (New York: Crown Publishers, 1978), pp. 90-3.

[2]Morris L. Ernst and Alexander Lindey, The Censor Marches On (New York: Doubleday, Doran, 1940), p. 53.

[3]"Facts of Life," Time, 18 April 1938, p. 57.

[4]William Manchester, The Glory and the Dream a Narrative History of America, 1932-1972 (Boston: Little, Brown, 1973), p. 118.

[5]Ibid., p. 120.

[6]"Facts of Life," p. 57.

[7]"The Birth of a Baby," Time, 4 April 1938, p. 30.

[8]Ernst and Lindey, The Censor Marches On, p. 98.

[9]Ibid., pp. 52-3.

[10]"Facts of Life," p. 58.

[11]"Life Begins," Editor and Publisher, 9 April 1938, p. 20.

[12]"Facts of Life (cont'd.)," Time, April 1938, p. 34.

[13]Ernst and Lindey, p. 53.

[14]"Obscene Magazine Ban to be Asked," Christian Science Monitor, 4 April 1938, p. 9.

[15]"107 Will Help Police as Censors," Christian Science Monitor, 5 April 1938, p. 9.

[16]"Censorship Plan Brings Results," Christian Science Monitor, 7 April 1938, p. 9. There was no specific reference to the name of the magazine, although later articles did point out that the periodical under question was the April 11 issue of Life. It should be noted that the magazine censorship board submitted the issue to Timilty for his ruling. This leads to the question of whether there was some dispute among the newsdealers as the "obscenity" of the photo essay, thus requiring them to submit the issue to Timilty for a final ruling, according to the plan agreed to several days before.

[17]"Picture Magazines With Pages Deleted Sold by Newsstands," Christian Science Monitor, 9 April 1938, p. 9.

[18]"Pittsfield, Mass." Memphis Commercial Appeal, 7 April 1938, p. 1.

[19]"Life Ban Spreads to Pennsylvania," New York Times, 10 April 1938, p. 21.

[20]Paul Blanshard, The Right to Read: The Battle Against Censorship (Boston: The Beacon Press, 1955), p. 156.

[21]"Boston Bans Another," New York Times, 11 April 1938, p. 6.

[22]"Ten Cities Ban Life's Birth Issue," New York Times, 8 April 1938, p. 6.

[23]"Wide Ban on 'Life' for Birth Pictures," New York Times, 9 April 1938, p. 15.

[24]"Hue and Cry Goes Up In Conservative Boston," Memphis Commercial Appeal, 8 April 1938, p. 2.

[25]"Timilty to Ask Magazine's Ban," Christian Science Monitor, 9 April 1938, p. 11

[26]Ibid., p. 9

[27]"St. Louis Police Take 'Life' Off Newsstands," St. Louis Post-Dispatch, 9 April 1938. For a similar account of these events, see "Seize Magazine Declared Lewd," St. Louis Globe-Democrat, 9 April 1938, p. 1. In this particular article, it was mentioned that Rogan was to appear before Judge Simpson's Court of Criminal Correction on April 14. However, no mention of this appearance, nor any mention of a dismissal of charges was contained in either of the St. Louis newspapers for several days surrounding this date. Also, a search for a reported case dealing with Rogan produced nothing. One can speculate that the charges were eventually dropped, and thus nothing was noted either officially or in the area newspapers.

[28]"Furor Over a Magazine's Pictures," St. Louis Post-Dispatch, 9 April 1938, p. 4.

[29]"Civil Liberties Committee Objects to 'Life,'" St. Louis Post-Dispatch, 11 April 1938, p. 4.

[30]"Life Ban Spreads to Pennsylvania," p. 21.

[31]"Commiteee Protests Magazine Seizure," St. Louis Globe-Democrat, 12 April 1938, p. 8.

[32]"All But 50 Copies of Seized Magazine Returned to Agent" St. Louis Post-Dispatch, 12 April 1938, p. 3.

[33]"City Officials Ban Magazine's Camera Study of Childbirth," Memphis Commercial Appeal, 8 April 1938, p. 1.

[34]Ibid.

[35]"Furor Condones, Condemns City's Ban on Life Magazine" Memphis Commercial Appeal, 9 April 1938, p. 1.

[36]Ibid., p. 3.

[37]Ibid., p. 1.

[38]"Ban Magazine With Pictures of Childbirth," Chicago Daily Tribune, 9 April 1938, p. 16.

[39]"Allman Lifts Temporary Ban on Sale of Magazine," Chicago Daily Tribune, 10 April 1938, p. 18.

[40]"Expert Publicity," New Orleans Times-Picayune, 9 April 1938, p. 8. The only mention of the ban in New Orleans encountered in this study came from news sources outside of the city. See, e.g., Memphis Commercial Appeal, 8 April 1938, p. 1; and Time, 18 April 1938, p. 58.

[41]"Life Ban Spreads to Pennsylvania" p. 21.

[42]"Facts of Life," p. 57.

[43]"Furor Condones, Condemns City's Ban on Life Magazine," p. 1.

[44]"Wide Ban on 'Life' for Birth Pictures," New York Times, 9 April 1938, p. 15.

[45]Ibid.

[46]"Publisher of 'Life' Arrested in Test," New York Times, 13 April 1938, p. 46.

[47]"Foley Condemns 'Sneering at God,'" New York Times, 25 April 1938, p. 9.

[48]"Wide Ban on 'Life' for Birth Pictures," p. 15.

[49]"Life Ban Spreads to Pennsylvania," p. 21.

[50]Ibid.

[51]"Publisher of Life Pushes Court Test," New York Times, 12 April 1938, p. 6.

[52]"Publisher of 'Life' Arrested in Test," p. 46.

[53]"Larsen Wins Point in Indency Trial," New York Times, 20 April 1938, p. 46.

[54]5 N.Y.S.2d 55, 57 (N.Y. Sp. Sess. 1938).

[55]"Court Clears 'Life' on Baby Pictures," New York Times, 27 April 1938, p. 3.

[56]5 N.Y.S.2d at 56.

[57]People v. Finkelstein, 114 N.Y.S.2d 810, 813 (N.Y. Magis. Ct., 1952); People v. Finkelstein, 156 N.Y.S.2d 104, 109 (N.Y. Magis. Ct. 1955).

[58]People v. Mishkin, 207 N.Y.S.2d 390, 394 (N.Y. Sp. Sess. 1960).

[59]Bantam Books v. Melko 96 A.2d 47, 59 (N.J. Super. Ct. Ch. Div. 1953).

[60]State v. Scope, 86 A.2d 154, 157 (Del. Super. Ct. 1952).

[61]Capitol Enterprises, Inc. v. City of Chicago, 260 F.2d 670, 675 (7th Cir. 1958).

[62]"A Lively Issue," Editor & Publisher, 16 April 1938, p. 20.

[63]Blanshard, The Right to Read, p. 156.

[64]Olga G. Hoyt and Edwin P. Hoyt, Censorship in America (New York: The Seabury Press, 1970), p. 42.

[65]Morris L. Ernst and Alan U. Schwartz, Censorship: The Search for the Obscene (New York: The Macmillan Co., 1964), pp. 114-5.

[66]"Mrs. Roosevelt Approves 'Birth of a Baby' Pictures," St. Louis Post-Dispatch, 18 April 1938, p. 9.